

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

<p>BOAR’S HEAD PROVISIONS CO., INC.,</p> <p>Respondent Employer,</p> <p>and</p> <p>UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW), AFL-CIO</p> <p>Charging Party Union.</p>	<p>Case Nos. 07-CA-209874 07-CA-212031</p>
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**UFCW’S OPPOSITION TO BOAR’S HEAD’S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Paragraph 24 of the NLRB’s April 27, 2018 Consolidated Complaint alleges that Boar’s Head violated sections 8(A)(1) and (3) by improving attendance and vacation policies in or about August 2017. On November 8, 2018, Boar’s Head filed a Motion for Partial Summary Judgment with eight accompanying exhibits, arguing that their evidence shows that changes to vacation and attendance policies were unrelated to employee organizing. Specifically, Boar’s Head’s argues that “there is no credible evidence whatsoever that supports any claim that the company changed its vacation and attendance policy as a quid pro quo in order to discourage union activity.” Respondent’s Brief at 1.

Whether the General Counsel has credible evidence is a question of fact appropriately before an Administrative Law Judge, and inappropriate for decision on summary judgment.

Section 102.24(b) of the Board's Rules and Regulations provides that the Board may deny summary judgment where “the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings, opposition and/or response indicate on their face that a genuine issue may exist.” For a grant of summary judgment, the record must show no genuine issues as to any material facts, and that the moving party is entitled to judgment as a matter of law. *Security Walls, LLC*, 361 NLRB 348 (2014). In cases where a complaint is legally insufficient, a motion will “admit all factual allegations of the complaint, and would contend that they do not constitute a violation. In that situation, there is no need for a hearing; a pure question of law is presented.” *Kiro, Inc.*, 311 NLRB 745, 746 (1993). That is not the case here.

Respondent’s evidence is not authenticated or stipulated. It has not been entered into the record at a hearing. Neither the General Counsel nor the UFCW has had the opportunity to contest the authenticity of Respondent’s evidence, and cross examine its witnesses.

Even if Respondent’s evidence were authenticated and undisputed, it does not necessarily support the conclusions in Respondent’s motion. Both the General Counsel and the UFCW dispute Boar’s Head’s claim that changes to vacation and attendance policies were made solely to retain employees, enhance productivity, and assist in a competitive hiring market. As the General Counsel’s response states, an Administrative Law Judge must determine whether anti-union animus motivated the company’s decision either in whole or in part. Because this is a genuine material factual dispute on the face of both pleadings, Respondent’s evidence is insufficient to support a judgment as a matter of law.

The Charging Party joins the arguments in the General Counsel's Opposition to Partial Summary Judgment, and respectfully requests that you deny Respondent's Motion.

/SKK/

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Dated: November 26, 2018

CERTIFICATE OF SERVICE

I, Sarai King, hereby certify that on November 26, 2018, I e-filed one copy of UFCW's Petition to Revoke with the NLRB. I further certify that copies of the foregoing were sent by e-mail to:

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